

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 496 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

POLA DEVSHI KANOJIA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 496 of 2001
MR PRAVIN GONDALIYA for Petitioner No. 1
Mr K G Sheth, APP for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 25/02/2002

ORAL JUDGEMENT

This is a revision under section 397 read with
section 401 of the Code of Criminal Procedure, 1973 (for
short, 'the Code') filed by the present petitioner who

was the accused before the learned Judicial Magistrate First Class at Rajkot in criminal case No.1597/98.

2. The petitioner was tried in the said case for an offence punishable under section 124 of the Bombay Police Act. It was alleged against him that on 16.2.1998 at about 9 p.m. the police officers were in night patrolling and at about 9.30 p.m, when they were passing by Kubaliapara Mafatiya para road crossing, it was noticed that the petitioner was going on by stepping down his eyes. It was also noticed that the petitioner enhanced his speed on seeing the police. Therefore, he was required to stop and when his activity and conduct were doubtful, his personal search was carried out and on such search a golden ingot was found from his person. It was found weighing 16 gm. and 380 mg. and its value was found to be Rs.6,000/-. The petitioner did not render any explanation for the possession of the said gold and, therefore, he was arrested and a case was filed against him which was registered as criminal case No.1597/98. Papers were supplied to the petitioner and after recording evidence, the trial court found that the petitioner was guilty for offence under section 124 of the Bombay Police Act and accordingly the petitioner was convicted and was sentenced to suffer S.I. for one month. The muddamal was ordered to be confiscated to the State of Gujarat.

3. Feeling aggrieved by the said judgment and conviction order dated 27.6.2001, the petitioner preferred criminal appeal No.2/2001 before the Sessions Court, Rajkot. The Sessions Court found that no interference was required. However, the appeal was partly allowed and the sentence already undergone was ordered against the petitioner. The order about confiscation of muddamal recorded by the trial court was confirmed by the Sessions Court. Feeling aggrieved by the said judgment and order of the learned Sessions Judge, Rajkot dated 10.9.2001, the petitioner has preferred this revision before this Court. It has been contended by the learned Advocate for the petitioner that there was no material before the trial court to hold the petitioner guilty and, therefore, the judgments and orders are illegal and perverse and deserve to be set aside. The petitioner has, therefore, prayed to set aside the judgment and orders of the two courts below.

4. On hearing the learned Advocates for the parties, Rule was issued. Mr K G Sheth, learned APP appears for the State. I have heard the learned Advocates for the parties and have perused the papers. So far as the

appellate judgement is concerned, it would be worthwhile to refer to para 5 of the judgment of the said court at page 22, which is reproduced for ready reference:

"The petitioner accused is in jail for last 15 days. Looking to the age of the petitioner which is about 25 years, he is a young man, he should not be kept in jail for a longer time. With hardcore criminals as if he is kept with hardcore criminals he would turn into a hardcore criminal. Looking to the entire facts and circumstances of the case, the finding of the learned trial court are not required to be disturbed. However, purpose would be served if the order of sentence is modified. Hence, the following order is passed."

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Looking to the aforesaid observations of the said court, it is clear that the learned Sessions Judge has not considered the arguments advanced by the petitioner on merit. It does not appear to be the case of the petitioner that he had foregone or let gone his contentions raised in the memo of appeal before the Sessions Court. It does not appear to be the case of the petitioner that he has not pressed the appeal on merit before the Sessions Court. In that view of the matter, the learned Sessions Judge was required to deal with the factual aspect also. The learned Session Judge was required to consider the arguments advanced on behalf of the petitioner for challenging the judgment and order of conviction recorded by the trial court. This has not been done. In that view of the matter, I am of the view that the judgment and order of the learned Sessions Judge suffers from legal infirmity, that the contentions raised by the petitioner have not been dealt with and have not been considered on merit. In that view of the matter, it cannot be said to be a judgment in the eye of law. The petitioner had preferred the appeal and appeal is a matter of statutory right. It is also a matter of right of the petitioner to get decision with respect to the matter on merit and with respect to the contentions raised by him before the Sessions Court. This has not been done. Therefore, the judgment and order of the Sessions Court have to be held to be illegal. This would not give an immunity to the present petitioner. When the conviction was upheld by the sessions court without dealing with the factual aspect of the case, it would be in the fitness of things to remand the matter fo the Sessions Court for deciding the matter afresh.

5. For the foregoing reasons, this Revision

Application is partly allowed. The judgment and order of the Sessions Court dated 10.9.2001 are ordered to be set aside. The matter is remanded to the Sessions Court for decision on merit according to law with respect to the contentions that may be raised before the Sessions Court by the petitioner. The petitioner shall appear before the said Court on 30.3.2002. The office shall transmit copy of this order to the sessions court so as to reach that court before the said date.

Rule is made absolute to the above extent.

25.2.2002 [D P Buch, J.]

msp